

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
WILMINGTON DIVISION**

**In the Matter of:
B&K COASTAL, LLC
Debtor**

**Chapter 11
Case No.: 11-08609-8-SWH**

**MOTION FOR APPROVAL OF PUBLIC SALE OF PERSONAL PROPERTY FREE
AND CLEAR OF LIENS**

Now comes B&K Coastal, LLC, the Debtor, by and through undersigned counsel, moving the court for an order allowing the public sale of certain personal property assets of the Debtor pursuant to 11 U.S.C. § 363. In support of this Motion, the Debtor shows the court the following:

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. On November 9, 2011 (the “Petition Date”), the Debtor filed a voluntary Petition initiating this case.
3. The Debtor has operated as a Debtor-in-possession since the Petition Date pursuant to 11 U.S.C. §§ 1107 and 1108.
4. On the Petition Date, the Debtor owned certain equipment and vehicles, which it uses in the operation of its business activities. The Debtor now seeks to auction some of its personal property (the “Property”), which is more specifically described in Exhibit A attached hereto and incorporated by reference.
5. As set forth in Exhibit A, the Property the Debtor now seeks to auction is encumbered by liens in favor of Ally Bank, CAT Financial, and Hudson Realty (collectively referred to as the “Secured Creditors”).
6. An application seeking to employ World Net Auctions, Inc. and William Martin (collectively the “Auctioneer”) to auction the Property was filed simultaneously with this Motion.
7. Pending approval of this Motion and the Application, the Auctioneer will offer the Property for sale at a public auction via the World Net Auctions, Inc. website on August 4, 2015 10:00 a.m. as provided in the Notice of Proposed Public Sale filed simultaneously herewith.
8. The Property shall be sold in **“AS IS” “WHERE IS” with NO WARRANTIES OR REPRESENTATIONS**. Valid, outstanding, taxes, if any, shall be prorated between the bankruptcy estate and the buyer through date of closing, unless, through no fault of the Debtor, the highest bidder(s) fails to pay in full for the equipment or vehicle(s) within fifteen (15) days of an order confirming the sale. In such event, any additional taxes or interest that become due

shall be assessed against the highest bidder(s) at closing. All other cost of sale, including transfer fees and other customary and ordinary closing costs shall be borne by the highest bidder(s).

9. A ten percent (10%) at risk deposit shall be required of the highest bidder(s) at the auction for piece of equipment or vehicle. Each deposit shall be held by Debtor's counsel in escrow pending closing. In the event the highest bidder(s) do not pay in full for the equipment and/or vehicle(s) they purchase within fifteen (15) days of the date an order confirming the sale is entered through no fault of the Debtor, then the highest bidder(s) shall be deemed to waive any deposits and the Debtor will retain same to apply towards its damages for the highest bidder(s) failure to close. The Debtor may extend the closing at its own discretion, or may impose a \$50/day fine for each subsequent day after the expiration of the thirty (30) day period until the sale for each piece of property sold is complete. The Debtor does not waive any of his rights or remedies set forth herein in the event it chooses to extend the deadline.

10. It appears that the Secured Creditors are the only entities asserting any claims against the Property. To the extent that the Secured Creditors or any other person or entity has a lien against the Property, the Debtor asks that the sale of the Property be made free and clear of all liens, encumbrances, claims, rights and other interests, including but not limited to the following:

a. Any and all property taxes due and owing to any city, county, or municipal corporation; and

b. Any and all remaining interests, liens, encumbrances, rights and claims asserted against the Property, which relate to or arise as a result of a sale of the Property or which may be asserted against any buyer of the Property, including but not limited to those liens, encumbrances, interests, rights and claims, whether fixed and liquidated or contingent and unliquidated.

11. Any claims found to be properly secured by the Property shall transfer to the net sales proceeds subject to all costs of sale and other reasonable administrative expenses as provided for in 11 U.S.C. §§ 330, 503, 506, 507, and any other applicable provisions of the Bankruptcy Code, as the court may allow.

12. If any creditor with a claim, lien encumbrance, right or interest in or against the Property does not object within the time allowed, such creditor shall be deemed to have consented to the auction of the Property free and clear of liens, claims, rights, and encumbrances.

13. The proceeds from the sale will be distributed first to allowed auctioneer costs and fees under 11 U.S.C. § 506(c). Valid, perfected and allowed secured claims shall then transfer to the net proceeds of the sale of the Property in their respective order of priority and in relation to the collateral securing such claims. The balance of the sale proceeds, if any, shall be retained by the Debtor's estate for proper distribution consistent with the Court's future orders.

14. The Debtor believes that the best method of preserving the rights of lien holders, and providing for all auctioneer and expense reimbursements and statutory or other ordered commissions is to sell the Property in the manner described herein.

WHEREFORE, the Debtor moves for an order that:

1. Authorizes the sale of the Property at public auction and free and clear of all liens, claims, rights, encumbrances and other interests pursuant to 11 U.S.C. § 363 and Fed. R. Bankr. P. 6004 and 6007, with valid secured liens, if any, to attach to the net sale proceeds in their relative order of priority;
2. Requires any high bidder(s) of the Property to bear all costs associated with the sale including, but not limited to transfer fees, taxes, and moving costs;
3. Requires any high bidder(s) to pay a deposit as outlined herein;
4. Preserves and assesses Bankruptcy Code Section 506(c) costs and commissions as set forth above;
5. Authorizes the Debtor to assign all rights title and interest the Debtor may have in the Property to the highest bidder(s) and sign all documents reasonably necessary to effectuate the transfer(s) contemplated herein; and
6. Waives the fourteen (14) day stay applicable to order authorizing the sale of property pursuant to Rule 6004(h) of the FEDERAL RULES OF BANKRUPTCY PROCEDURE be waived.
7. For such other and further relief as may be required.

This the 2nd day of June, 2015.

s/George Mason Oliver
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APPLICATION TO EMPLOY AND COMPENSATE AUCTIONEER**EXHIBIT A**

<u>Property Description</u>	<u>Current Value of Property</u>	<u>Creditor</u>
2007 GMC Sierra VIN 1GTEC14X67Z637782	\$4,800.00	Ally Bank
2006 GMC Sierra VIN 1GTEK19B16Z132117	\$6,759.45	Ally Bank
2008 GMC Sierra VIN 1GTEC14X48Z142028	\$4,800.00	Ally Bank
2008 GMC Canyon VIN 1GTCS149088170930	\$3,000.00	Ally Bank
D6N Tractor, 320DL Excavator, and 8510B Leeboy	\$180,000.00	CAT Financial
2000 Peterbuilt 379 Tandem Truck Tractor 2004 CAT D5G LGP Crawler Tractor 2000 Ford F350 XL Super Duty Utility Truck 2002 Chevrolet 2500 Silverado Pickup Truck 2001 Chevrolet 2500 Pickup Truck 2005 Finn B70-T Strawblower 1994 IHC 8100 Lube & Fuel Truck 1998 Trail King TK70RG Tandem Lowboy 2000 Peterbuilt 379 Tandem Truck Tractor 2003 CAT 420D IT 4X4 Loader Backhoe 2003 CAT 420D IT 4X4 Loader Backhoe 2004 CAT D5G LGP Crawler Tractor 2000 Peterbuilt 379 Tandem Truck Tractor 2000 Peterbuilt 379 Tandem Truck Tractor 1999 Sterling L7501 Vac Truck 2007 Power Curber 5700C Curb & Gutter Machine 1995 CAT D4H LGP Crawler Tractor 2001 Mack RD688S Quad Axle Dump Truck	\$436,500.00	CAT Financial

1999 Peterbuilt 379 Tandem Truck Tractor 2003 Kobelco SK160LC Hydraulic Excavator 2004 CAT 420D IT 4X4 Loader Backhoe 2004 CAT 420D 4X4 Loader Backhoe 2000 Mack RD688S Quad Axle Dump Truck 1988 Kenworth T800 Tandem Truck Tractor 1994 Mack CH613 Tandem Truck Tractor 2001 Mack RD688S Quad Axle Dump Truck 2000 Peterbuilt 357 Quad Axle Dump Truck 1994 Peterbuilt 379 Tandem Truck Tractor 2001 Mack RD688S Quad Axle Dump Truck 2001 Mack RD688S Quad Axle Dump Truck 2000 Peterbuilt 379 Tandem Truck Tractor 1998 Kenworth T800 Tandem Truck Tractor 1998 Kenworth T800 Tandem Truck Tractor 1977 White 42' Tandem Lowboy		
Caterpillar Track Type Tractor Model No. D6RIIILGP and Serial No. WRG00780 Caterpillar Track Type Tractor Model No. D6RIIILGP and Serial No. WRG00771	\$210,000.00	CAT Financial Leases
2009 Land Rover VIN SALMF13419A304667 2008 Ford Truck VIN 1FDWW37R58EC32196 2010 Chevy Truck VIN 3GCRKTE30AG215171 2010 Chevy Truck VIN 3GRCKTE3XAG229644	\$66,000.00	Hudson Realty

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**NOTICE OF MOTION FOR APPROVAL OF PUBLIC SALE OF PERSONAL
PROPERTY FREE AND CLEAR OF LIENS**

TO: Secured Creditors and Other Parties-in-Interest

NOTICE IS HEREBY GIVEN in accordance with FEDERAL RULES OF BANKRUPTCY PROCEDURE 2002(a), 6004 and 6007 and 11 U.S.C. § 363 of the Motion for Approval of Public Sale of Personal Property ("Motion") filed simultaneously herewith by B&K Coastal, LLC (the "Debtor"), seeking an order approving the sale of certain personal property owned by the Debtor.

The certain personal property, which is more particularly described in the Motion as the "Property." All creditors known to the Debtor that may assert claims or liens against the Property are listed in the Motion and the Debtor reserves any and all rights and objections thereto. The Property shall be sold **"AS IS" "WHERE IS" with NO WARRANTIES OR REPRESENTATIONS** with valid, local taxes to be prorated between the bankruptcy estate and the highest bidder(s) through the date of closing and with all other costs, including transfer fees, to be borne by the highest bidder(s). The Debtor has also requested the authority to sell the Property free and clear of all liens and other interests. Also, pending before the court, is an Application to Employ World Net Auctions, Inc. and William Martin. If that Application is approved, then an auction will be held on **August 4, 2015 at 10:00 a.m** via the World Net Auctions, Inc. website.

FURTHER NOTICE IS HEREBY GIVEN that this Motion may be allowed provided no response and request for a hearing is made by a party in interest in writing to the Clerk of this Court on or before **June 26, 2015**; and,

FURTHER NOTICE IS HEREBY GIVEN that a hearing will be conducted on the Motion only if objections are filed. If a response is filed and a hearing is requested it will be held on **July 7, 2015 at 10:00 a.m. at the United States Courthouse Eastern District of North Carolina, 300 Fayetteville Street, 2nd Floor, Raleigh, North Carolina**. If no request for a

hearing is timely filed, the Court may rule on the Motion and response thereto ex parte without further notice. Any party filing an objection requesting a hearing, shall appear at said hearing or they may be taxed with Court costs.

This the 2nd day of June, 2015.

s/George Mason Oliver
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Attorneys for the Debtor

CERTIFICATE OF SERVICE

I, George M. Oliver, Post Office Box 1548, New Bern, N.C. 28563 certify;

That I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age;

That on the 2nd day of June, 2015, I served copies of the Application To Employ and Compensate Auctioneer and Notice thereof on the parties listed below, as indicated.

I certify under penalty of perjury that the foregoing is true and correct.

This is the 2nd day of June, 2015.

s/ George M. Oliver

George M. Oliver

N.C. State Bar No. 26587

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Cc:

Bankruptcy Administrator (via CM/ECF)

B&K Coastal, LLC

Attention: J. Keith Stark

PO Box 2101

Wilmington, NC 28402

World Net Auctions Live

c/o Chuck Easler

9988 Hwy 521

Greeleyville, SC 29056